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09/744,042	03/15/2001	Claus Mohr Pedersen	472-1036	2332

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WILLIAM J. SAPONE  
COLEMAN SUDOL SAPONE P.C.  
714 COLORADO AVENUE  
BRIDGEPORT, CT 06605

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/744,042

Applicant(s)

PEDERSEN, CLAUS MOHR

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment (paper no. 13) dated 2-14-03 and this action is non-final.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "Apparatus for the cutting..." in the preamble on line 1.

There is insufficient antecedent basis for this limitation in the claim. The claim should read - -An apparatus...- -. Further, claims 2-7 on line 1 state "Apparatus of claim 1..." and should read - -The apparatus of claim 1...- -.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "preferably" on line 1 is indefinite in that it is unclear to what other types of sensor units other than a photocell are claimed as the invention.

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Claim 8 recites the limitation "Method..." in the preamble on line 1. There is insufficient antecedent basis for this limitation in the claim. The claim should read - -A method...- -. Further, claims 9-11 state "Method..." on line 1 and should read - -The method...- -.

Regarding claim 8, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claims 9-11 depend from rejected claim 8 and include all of the limitations of claim 8 thereby rendering these dependent claims indefinite.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to what is meant by "suitable for this purpose" on line 2, in that it is unclear to what the purpose is as claimed by the applicant.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,557,019 to Van Devanter et al. in view of U.S. Patent No. 5,094,650 to Schmidt.

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Referring to claims 1 and 8, Van Devanter discloses an apparatus for the cutting up of fish and fish fillets in slices, comprising a feeding unit – at 12 which comprises means for the feeding of the fish/fillets, the feeding unit conveying the fish/fillets to a cutting unit – at 22 which cuts the fish/fillets in slices, and means for the collection and processing of data – at 20, in which means for the collection and processing of data comprise means for the registration of the length of a fish/fillet in the feeding direction and/or the weight of the fish/fillet – see for example the description of the monitoring station and processing unit in columns 2-5, and the feeding unit comprises a plane on which the fish/fillet is placed and fed forward, the plane forming a settable angle to the horizontal plane to cut the fish into equal portions and also a gripping device – proximate 24-25 which comprises means for handling of the slices from the area in which the cutting takes place – see for example figures 1-2. Van Devanter does disclose the angle of the blade of the cutting unit – 22, is automatically adjustable with respect to the conveyor – at 12 according to the size and weight of the fish fillet – see for example columns 2-7. Van Devanter does not disclose the feeding unit comprises a plane forming a settable and adjustable angle to the horizontal plane, and means for automatic adjustment of the angle of the plane during cutting in relation to the cutting unit as a function of the length and/or weight of the fish/fillet. Schmidt does disclose the feeding unit – at 2-4 and 7, 10, comprises a plane – at 4 and 10, forming a settable and adjustable angle to the horizontal plane, and means for adjustment of the angle of the plane – at 13-14, during cutting in relation to the cutting unit as a function of the length and/or weight of the fish/fillet – see for example column 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Van Devanter and add the

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adjustable conveyor of Schmidt, so as to allow for the device to be flexible in that it can process fish fillets of varying sizes on the same apparatus.

Referring to claim 2, Van Devanter as modified by Schmidt further discloses a sensor unit – at 20 is placed a distance to the cutting unit – at 22, and opposite the feeding direction for the registration of the start area and the end area of each fish/fillet – see for example figures 1-3 of Van Devanter.

Referring to claim 9, Van Devanter as modified by Schmidt further discloses the slice is removed by the gripping device with a combined linear and rotating movement of the device from a start position to an end position – see for example figures 1-2 of Van Devanter.

Referring to claim 10, Van Devanter as modified by Schmidt further discloses in which from its end position, the gripping device returns to its start position within a period of time, in which period of time the fish/fillet is fed forward a given first distance on the conveyor – see for example figures 1-2 of Van Devanter.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Devanter as modified by Schmidt as applied to claim 1 above, and further in view of Soviet Patent No. 1001-909-A.

Referring to claims 3-4, Van Devanter as modified by Schmidt does not disclose at least one pivotal jaw displaceable in a linear manner. The Soviet patent does disclose a pivotal jaw displaceable in a linear manner – see the English abstract and figures 2-3. Therefore, it would have been obvious to one of ordinary skill in the art to take the device of Van Devanter as modified by Schmidt and add the pivotal jaw-gripping device of the Soviet patent, so as to allow for fish to be properly positioned with respect to the processing device during use.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Devanter as modified by Schmidt as applied to claim 1 above, and further in view of U.S. Patent No. 5,395,282 to Harris et al. Van Devanter as modified by Schmidt does not disclose securing elements in the form of wheels or drums with a periphery in which barbs are mounted. Harris does disclose securing elements in the form of wheels – at 32-33 or drums with a periphery in which barbs – 44 are mounted – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Van Devanter as modified by Schmidt and add the securing elements of Harris, so as to allow for the fish fillet to be securely held in place to affect a more accurate cutting of the fillet.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Devanter as modified by Schmidt as applied to claim 1 above, and further in view of DE Patent No. 2709152 to Nordisch. Van Devanter as modified by Schmidt does not disclose the means for automatic adjustment comprise a microprocessor. Nordisch does disclose the means for automatic adjustment comprise a microprocessor – see for example the English abstract. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Van Devanter as modified by Schmidt and add the automatic adjustment via microprocessor of Nordisch, so as to allow for a more accurate cutting and processing of the fish fillet.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Devanter as modified by Schmidt as applied to claim 1 above, and further in view of DL Patent No. 0135798 to Spranger. Van Devanter as modified by Schmidt does not disclose the means for setting of the angle comprise a motor and a spindle. Spranger does disclose the means for setting of the angle comprise a motor and a spindle – see for example at items 6-7. Therefore it would have been

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obvious to one of ordinary skill in the art to take the device of Van Devanter as modified by Schmidt and add the means for setting being a motor and spindle, so as to allow for an effective and accurate adjustment means to allow for more accurate cutting of the fish fillet.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Devanter as modified by Schmidt as applied to claim 8 above, and further in view of U.S. Patent No. 5,458,535 to Bullock et al. Van Devanter as modified by Schmidt does not disclose placing the fish in a packaging moved synchronous with the feeding of the fish. Bullock does disclose placing the fish in a packaging – proximate 50 as seen in figure 1, moved synchronous with the feeding of the fish – see for example figure 1 and column 6 lines 37-52. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Van Devanter as modified by Schmidt and add the packaging of Bullock, so as to allow for the fish to be protected during subsequent processing steps.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.



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The following patents are cited to further show the state of the art with respect to fish fillet processing devices in general:

U.S. Pat. No. 4,250,594 to Mitchell – shows inclined conveyor

U.S. Pat. No. 4,718,146 to Adkison – shows fillet-processing machine

U.S. Pat. No. 5,354,232 to Pontow – shows gripping element

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.



SUPERVISOR  
TELEPHONE 308-2574